

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

FILED BY [Signature] D.C.  
05 MAY 11 PM 4:32  
ROBERT D. [Signature]  
CLERK, U.S. DIST. CT.  
W.D. OF TN. MEMPHIS

CARL BROWN,

Plaintiff,

vs.

JOYCE ANDERSON, et al.,

Defendants.

X  
X  
X  
X  
X  
X  
X  
X  
X  
X

No. 04-2520-M1/V

ORDER TO COMPLY WITH THE PLRA  
AND  
NOTICE OF APPELLATE FILING FEE

Plaintiff Carl Brown, Bureau of Prisons inmate registration number 11534-076, an inmate at the Federal Correctional Institution in Memphis, filed a pro se complaint pursuant to Bivens v. Six Unknown Fed. Narcotics Agents, 403 U.S. 388 (1971), on July 2, 2004, along with an in forma pauperis affidavit containing a certification by the trust fund officer at the prison. The Court issued an order on November 23, 2004, denying leave to proceed in forma pauperis and directing the Plaintiff to remit the civil filing fee within thirty (30) days. Plaintiff paid the filing fee on December 9, 2004. The Court issued an order on December 27, 2004, that dismissed the case pursuant to 28 U.S.C. §§ 1915(e)(2)(B)(ii) and 1915A(b)(1), certified that any appeal would not be taken in good faith, and informed him that, if he wishes to take advantage of the installment payment provisions for paying the appellate filing fee, he must comply with

9

the procedures set out in McGore v. Wigglesworth, 114 F.3d 601, 611 (6th Cir. 1997), and 28 U.S.C. § 1915(b). Judgment was entered on December 29, 2004. Plaintiff filed a notice of appeal on January 10, 2005. The Plaintiff has not, however, paid the appellate filing fee. Accordingly, the Sixth Circuit has remanded this case for the issuance of a deficiency order.

The final matter to be addressed is the assessment of the \$255 appellate filing fee. The United States Court of Appeals for the Sixth Circuit has held that a certification that an appeal is not taken in good faith does not affect an indigent prisoner plaintiff's ability to take advantage of the installment procedures contained in 28 U.S.C. § 1915(b). McGore, 114 F.3d at 610-11. McGore sets out specific procedures for implementing the Prison Litigation Reform Act of 1995 ("PLRA"). Therefore, the Plaintiff is instructed that if he wishes to take advantage of the installment procedures for paying the appellate filing fee, he must comply with the procedures set out in McGore and § 1915(b). In particular, the Plaintiff must, within thirty days of the date of entry of this order, file a completed in forma pauperis affidavit and a prison trust fund account statement showing:

- 1) the average monthly deposits, and
- 2) the average monthly balance

for the six months prior to the filing of the notice of appeal, and

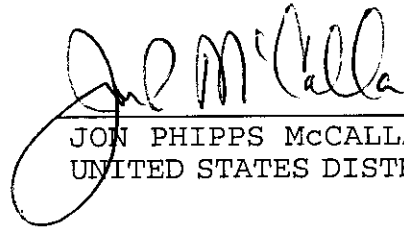
- 3) the account balance when the notice of appeal was filed.

It is ORDERED that within thirty (30) days of the date of entry of this order the Plaintiff properly complete and file both an in forma pauperis affidavit and a trust fund account statement showing the

above amounts. If the Plaintiff fails either to file these documents or to pay the \$255 filing fee, this Court will notify the Sixth Circuit, which will dismiss the appeal.

The Clerk shall transmit a copy of this order to the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED this 11th day of May, 2005.



---

JON PHIPPS MCCALLA  
UNITED STATES DISTRICT JUDGE



## Notice of Distribution

This notice confirms a copy of the document docketed as number 9 in case 2:04-CV-02520 was distributed by fax, mail, or direct printing on May 12, 2005 to the parties listed.

---

Carl Brown  
11534-076  
P.O. Box 34550  
Memphis, TN 38184--055

Honorable Jon McCalla  
US DISTRICT COURT